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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-NINTH SESSION

Report of Mr. José Bengoa, Chairman of the Sub-Commission at its forty-ninth session, prepared in accordance with paragraph 10 of Commission on Human Rights resolution 1997/22

Introduction

1. In its resolution 1997/22 of 11 April 1997 entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", the Commission on Human Rights expressed its appreciation of the steps undertaken by the Sub-Commission to reform and improve its methods of work, in particular the rationalization of its draft provisional agenda for its forty-ninth session, the initiation of a study on how to revise its work schedule for improved consultation among members (decision 1996/112), the decision to limit the initiation of new studies (decision 1996/113), the compilation of the existing rules of procedure and procedural questions to be resolved (decision 1996/114) and the decision to avoid duplication of the work of the Commission on Human Rights by not taking action during its forty-ninth session on human rights situations under consideration in the public procedures of the Commission (decision 1996/115). The Commission reaffirmed that the Sub-Commission could best assist the Commission by providing it with recommendations based on the views and perspectives of independent experts, which should be appropriately reflected in the report of the Sub-Commission, as well as in the expert studies carried out under its auspices. It also reaffirmed that members of the Sub-Commission should discharge their functions in their personal capacity.

2. In the same resolution, the Commission requested the Sub-Commission to continue thoroughly reviewing its working methods with a view to improving further its efficiency and avoiding duplication with the Commission and its mechanisms, taking into account the views of Member States, and, in this context, called upon the Sub-Commission:

(a) To focus on its primary role as an advisory body of the Commission on Human Rights;

(b) To refrain henceforth from duplicating action by the Commission on Human Rights with regard to country situations under consideration in the public procedures of the Commission and, furthermore, limit action to exceptional cases in which new and particularly grave circumstances arise;

(c) To give particular attention to the process of selection of studies and, when choosing subjects for study, to take into account recommendations of the Commission on Human Rights and the treaty bodies, explaining the choice made so as to enable the Commission adequately to assess the need for a specific study;

(d) To improve further the independence and the impartiality of the Sub-Commission, in particular in discussions concerning the situation in a specific country;

(e) To facilitate efficient and effective participation of non-governmental organizations;

(f) To improve consultations with special rapporteurs undertaking studies for the Sub-Commission;

(g) Further to enhance cooperation with mechanisms of the Commission and, within their competence, with all relevant bodies, including the human rights treaty bodies and relevant United Nations research institutions;

(h) To focus strictly on questions relating to human rights in accordance with its mandate.

3. The Commission called upon the Sub-Commission to devote sufficient time at its forty-ninth session to the discussion of its working methods and to prepare specific recommendations on that issue for consideration by the Commission on Human Rights.

4. The Commission requested the Chairman of the Sub-Commission at its forty-ninth session to report to the Commission at its fifty-fourth session on significant aspects of the work of the Sub-Commission.

5. In pursuance of this request, the Chairman of the Sub-Commission submits the present concise report to the Commission. More details regarding the various aspects of the work of the forty-ninth session of the Sub-Commission will be provided, if necessary, by the Chairman of the Sub-Commission in his statement to the Commission at its fifty-fourth session. The report of the Sub-Commission on its forty-ninth session is before the Commission in document E/CN.4/1998/2-E/CN.4/Sub.2/1997/50.

I. AGENDA OF THE SUB-COMMISSION AND ITS RATIONALIZATION

6. In compliance with the request by the Commission to rationalize the agenda, the Sub-Commission adopted at its forty-ninth session, an agenda containing 14 items (instead of 22 in 1996), which included both procedural items relating to its organization of work and substantive items covering the various elements of the mandate set by the Commission and the Economic and Social Council for the Sub-Commission. The rationalization consisted partly in grouping together several interrelated issues under one agenda item, and partly in greater use of the biennial consideration of some sub-items. This rationalization made it possible for the Sub-Commission to better manage its work in the limited time available at the session and facilitated more in-depth study of the items under discussion.

II. STATEMENT BY THE CHAIRMAN OF THE FIFTY-THIRD SESSION OF THE COMMISSION ON HUMAN RIGHTS

7. In paragraph 9 of its resolution 1997/22, the Commission invited its Chairman to inform the Sub-Commission on the debate under the Commission agenda item entitled "Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-eighth session". Pursuant to that resolution, the Sub-Commission extended an invitation to the Chairman of the fifty-third session of the Commission, Mr. Miroslav Somol, who addressed the Sub-Commission on 5 and 6 August 1997.

8. The Chairman said that there was no dispute amongst members of the Commission that the Sub-Commission had changed during the past years. This had happened not only because of its own development, but was also due to changes in other relevant human rights bodies and organs. Many delegations had welcomed the steps already taken by the Sub-Commission towards the rationalization of its work, for example, its decision not to take action on human rights situations that were already being considered by the Commission. He stressed, however, that there was still a need for further and deeper reform.

9. The Sub-Commission had an important role to play as an adviser to the Commission in regard to its expert studies. The Sub-Commission should give particular attention to the process of selection of studies and, in so doing, think carefully about how any proposals would serve to meet the needs of the international community in the field of human rights.

10. He pointed out that the Commission realized that each of the experts came from a different country. Indeed, it was through a diversity of views that the Sub-Commission could bring its true expertise and multicultural wisdom to bear to help solve human rights problems of concern to all. He expressed his conviction that politicized interventions on country situations should be avoided, so as to preserve the experts' independence and impartiality.

11. Finally, Mr. Somol mentioned that the Commission had also called upon the Sub-Commission to "facilitate efficient and effective participation of non-governmental organizations". In his view, NGOs played an important and valuable role as suppliers of information. Both the Commission and the

Sub-Commission had long valued the contribution of NGOs in that respect. In order to further develop and improve their mutual relationship with the NGO community, both the Commission and the Sub-Commission, together with concerned NGOs, should discuss new possibilities for cooperation that would make access to and the flow of information more effective and less time-consuming.

III. ACTION BY THE SUB-COMMISSION ON ITS METHODS OF WORK

12. The Sub-Commission conducts its work partly through its study programme, partly by use of its working groups and partly by plenary debates and decisions. Four intersessional working groups met before the forty-ninth session: the Working Group on Communications, the Working Group on Indigenous Populations, the Working Group on Minorities and the Working Group on Contemporary Forms of Slavery.

13. The last three working groups are very possibly the strongest pillars supporting the work of the Sub-Commission. More thought should, perhaps, be given to the way in which the discussions and outcomes of these working groups are related to the work of the Sub-Commission in plenary so as to ensure that, on the one hand, there is no duplication of the discussions in the working group and those in the Sub-Commission and, on the other, that the quality of the debates in the working groups and, in particular, their results are genuinely familiar to and discussed by all the members. In other words, consideration should be given to improving the substantive relationship between the working groups and the Sub-Commission plenary.

14. In addition to the above-mentioned working groups, the Sub-Commission established sessional working groups on the administration of justice and on its methods of work. In the latter working group particular attention was given to the selection, number and conduct of studies. Another problem discussed was how to make the best use of the time available during each session and, eventually, the possibility of holding a five-week session.

15. The Sub-Commission had held 41 meetings of, altogether, over 120 hours. Approximately 45 hours were used by the 26 experts (more than 600 interventions), 11 hours by the 102 governmental observers (approximately 110 interventions including right of reply), 25 hours by the 118 accredited NGOs (approximately 220 statements), and the rest of the time by the Chairman, invited speakers, intergovernmental organizations and specialized agencies. Approximately 1,210 persons attended the forty-ninth session of the Sub-Commission.

16. A total of 102 documents were considered, amounting to 1,368 pages. The simultaneous distribution of documents in all the official languages was carried out for the first time in the work of the Sub-Commission.

17. A total of 43 resolutions and 19 decisions covering a wide range of topics were adopted.

IV. METHODS OF WORK REGARDING THE AGENDA ITEM ON VIOLATIONS OF HUMAN RIGHTS

18. Pursuant to paragraph 3 (b) of Commission resolution 1997/22, country situations under consideration in the public procedures of the Commission were not discussed by the Sub-Commission. In addition, the Sub-Commission decided (decision 1997/106) to vote by secret ballot on all draft resolutions and procedural motions concerning its agenda items relating to violations of human rights and fundamental freedoms and the "1503 procedure".

19. In conclusion, the Sub-Commission expressed the view that, through its resolution 1997/22, the Commission on Human Rights had opened up new possibilities for the Sub-Commission in analysing the human rights situation throughout the world. That item of the Sub-Commission's agenda took up almost the entire first week of its work as well as three long and concentrated meetings for the adoption of resolutions. In all, 10 meetings were devoted to the item. There was a feeling that the Sub-Commission had once again become a forum for, sometimes impassioned, discussion of what was happening in the world in the matter of human rights. It is, perhaps, not all that important, or not solely important, that many resolutions should be adopted, but the debate that took place on all these subjects was considered to be of great significance, as regards both the contributions of the non-governmental organizations and governmental observers and the thinking and discussion of the Sub-Commission experts themselves.

V. REPORTS, STUDIES AND NEW SUBJECTS

20. Several studies were completed at the forty-ninth session, including two on the subject of impunity.

21. A final report on states of emergency was presented by Mr. Leandro Despouy, and the Sub-Commission appointed Mr. Ioan Maxim as the new Special Rapporteur on this issue. Another final report, on the subject of population transfers, was presented by Mr. Awn Al-Khasawneh, and it was decided that the report should be widely disseminated.

22. There are five ongoing studies: systematic rape and sexual slavery during armed conflict; treaties, agreements and other constructive arrangements between States and indigenous populations; traditional practices affecting the health of women and the girl child; indigenous people and their relationship to land; and human rights and income distribution.

23. The Sub-Commission received a progress report on the joint working paper that is being prepared by two members of the Sub-Commission together with two members of the Committee on the Elimination of Racial Discrimination on article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination. The joint working paper, initiated by decision 1996/120 at the Sub-Commission's forty-eighth session, is to be presented at the Sub-Commission's fiftieth session and is the first collaborative effort with the Committee on a research paper.

24. The preparation of the following working papers was entrusted to experts during the forty-ninth session: the right to education, including education

in human rights; weapons of mass destruction or with indiscriminate effect; the relationship between the enjoyment of human rights and the working methods and activities of transnational corporations; illicit transfer of arms; the right of access to drinking water supply and sanitation services; the concept of affirmative action; and juvenile justice. Studies on the right to a fair trial and the right to adequate food are to be updated. On the basis of those working papers the Sub-Commission will decide next year whether some of the issues studied therein should become the subject of more profound study to be undertaken by new special rapporteurs of the Sub-Commission. As in the past, the preparation of all working papers will be undertaken by experts without financial implications.

25. The Sub-Commission adopted decision 1997/112 establishing the criteria to be followed by the Sub-Commission when selecting new subjects for study.

26. Several new subjects were introduced into the work of the Sub-Commission. These included women and the right to adequate housing and to land and property; the right to return; the need for respect for humanitarian and human rights law provisions in United Nations peacekeeping operations; legal standards applicable to forced displacements; the adverse consequences of economic sanctions on the enjoyment of human rights; the need for members and governmental and non-governmental observers to carry out a constructive dialogue and consultations on human rights; and the situation of street children and minor detainees.

27. The subject of terrorism and human rights was given particular attention following the working paper presented by alternate member Ms. Kalliopi Koufa, who was recommended as Special Rapporteur to conduct a comprehensive study on this subject.

28. New special rapporteurs were also recommended to be assigned on the following subjects: the right to freedom of movement (Mr. Volodymyr Boutkevitch); adverse and positive consequences of scientific progress (Mr. Osman El-Hajje); and privatization of prisons (Mr. Mohamed Ali Khan).

29. There was also a recommendation to the Commission for the appointment of a special rapporteur of the Commission on the impunity of perpetrators of violations of economic, social and cultural rights.

VI. CHAIRMAN'S EVALUATION OF THE FORTY-NINTH SESSION OF THE SUB-COMMISSION

30. The Sub-Commission's new agenda, based on the systematic grouping of topics, has proved to be extremely rational and has contributed to the high level of its discussions, particularly those on racism and migrant workers and new forms of xenophobia, as well as on the effects of these factors on economic, social and cultural conditions in the modern world. During the discussions, the Sub-Commission was on several occasions urged to emphasize such topics and accord them priority in its future work. Furthermore, the agenda has enabled it to establish a relationship, in a novel, up-to-date and interesting manner, between racist and xenophobic trends and questions connected with new forms of work, migrant workers, transnational corporations

and major migratory movements. It was suggested that the Sub-Commission should envisage either the establishment of a working group to consider such questions or their coverage by the mandate of an existing working group.

31. Economic, social and cultural rights, in which increasing interest is being shown each year in the Sub-Commission, were the subject of eight resolutions, and everything indicates that respect for these rights will in future be examined with an increasing amount of attention. Other topics with which the Sub-Commission has dealt, such as freedom of movement, forced eviction, the right of return and in particular terrorism and human rights, should also be kept under consideration and others, such as the arms traffic, should be studied in greater detail.

32. The Sub-Commission should, however, rationalize the work of its fiftieth session even further. He noted in that connection that the practical and clear criteria for the preparation of new studies, established by the sessional working group on the methods of work of the Sub-Commission, should make it possible to improve the quality of its future work. At its forty-ninth session, the Sub-Commission has already proved itself to be an open, democratic and devoted body, conscious of the importance of its work. It should continue to improve the quality of its discussions by taking into account as much as possible the diversity of existing political and cultural situations. Its fiftieth session, which will coincide with the fiftieth anniversary of the Universal Declaration of Human Rights, will be of particular importance for the work it is doing.